

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,
AND THE UTAH STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE RIVERDALE BENCH/BRYSON MEADOWS PROJECT,
DAVIS COUNTY, UTAH**

WHEREAS, the United States Army Corps of Engineers, Sacramento District (USACE) proposes to issue a permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) to Fords Inc. (Applicant), for the Riverdale Bench/Bryson Meadows Project (Project) located in Davis County, Utah (Undertaking); and

WHEREAS, the Project would include piping approximately 1,580 linear feet of earthen and concrete segments of the Riverdale Bench Canal within the approximately 7.5-acre permit area; and

WHEREAS, the USACE, in consultation with the Utah State Historic Preservation Officer (SHPO) and in accordance with 36 CFR § 800.4(a)(1), has established the Undertaking's Area of Potential Effects (APE) as including the areas to be developed as part of the Undertaking, including all construction and staging areas. The APE is depicted as the "Study Area" on the May 1, 2017, *Figure 2. Location of the area surveyed for the Riverdale Bench Canal Relocation at the Old Maple Farms Subdivision* map, prepared by Commonwealth Heritage Group, Inc., included as Attachment 1 to this Memorandum of Agreement (MOA); and

WHEREAS, the USACE, in accordance with 36 CFR § 800.4(b) and § 800.4(c), has inventoried historic properties within the Undertaking's APE and has determined that Site 42DV192, the Riverdale Bench Canal, is eligible for inclusion in the National Register of Historic Places (NRHP) under Criterion A, and the SHPO has concurred with this determination in a letter dated June 6, 2017; and

WHEREAS, the USACE, has applied the criteria in 36 CFR § 800.5(a) for determining adverse effect, and determined that the Undertaking will have an adverse effect on Site 42DV192, and the SHPO has concurred with this determination in a letter dated June 6, 2017; and

WHEREAS, the USACE has considered alternatives to the Undertaking, has chosen to proceed with the Undertaking, and has determined to resolve adverse effects of the Undertaking on Site 42DV192 through the execution and implementation of this MOA; and

WHEREAS, the Applicant has participated in the development of this MOA and this MOA assigns responsibilities to the Applicant, the USACE has invited the Applicant to sign this MOA as an Invited Signatory; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the USACE notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination with specified documentation on June 14, 2017, and the Council declined to participate in the Section 106 consultation process in a letter dated July 19, 2017; and

NOW, THEREFORE, the USACE and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated.

STIPULATIONS

The USACE shall make this MOA a condition of the permit for the Project and shall ensure that the following measures are carried out by the Applicant to the satisfaction of the USACE:

I. DEFINITIONS

The definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this MOA.

II. TREATMENT OF ADVERSE EFFECTS

- A.** Within ten (10) calendar days of completion of construction, the Applicant shall notify the USACE of the completion of the work.
- B.** Within thirty (30) calendar days of completion of construction, the Applicant shall submit an IMACS site update record to the Utah State Historic Preservation Office and the USACE documenting the relocation and piping of the Riverdale Branch Canal segment.

III. DISCOVERY OF CULTURAL REMAINS DURING GROUND-DISTURBING ACTIVITIES

- A.** Should any human remains or cultural material be discovered during project implementation, the Applicant will ensure work immediately ceases (allowing for necessary safety precautions to be completed) within 100 feet of the discovery and the discovery location secured from additional impacts from project construction. The Applicant, or their designated representative, shall immediately notify the USACE of the discovery. The USACE shall coordinate with SHPO and appropriate Tribe(s) and/or interested parties regarding the discovery, pursuant to 36 CFR § 800.13.

- B.** Once the USACE is notified of the discovery, a qualified consultant who meets or exceeds the appropriate professional qualifications pursuant to Stipulation V.A.1 shall prepare a report on the discovery and distribute the report concurrently to the USACE and the SHPO. The report shall fully describe the finding(s) with maps and photographs. The proposed disposition of any artifacts shall be clearly addressed. Artifacts or features of cultural or temporal significance shall be completely described with drawings and/or photographs.
- C.** Discoveries shall be addressed in accordance with 36 CFR § 800.13. Once treatment of the human remains or cultural material has been completed in the area secured from project construction, the project may resume in that area upon written notification from the USACE.

IV. STANDARDS

A. PROFESSIONAL QUALIFICATIONS AND STANDARDS

1. Professional Qualifications.

All historic preservation activities implemented pursuant to this MOA shall be conducted by, or under the direct supervision of, a person or persons meeting, at a minimum, the Secretary of Interior's *Professional Qualifications Standards* (PQS) for Archeology, History, or Architectural History, as appropriate (48 FR 44738-39).

2. Historic Preservation Standards.

All historic preservation activities carried out pursuant to the MOA shall meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44740) as well as standards and guidelines for historic preservation activities established by the SHPO and National Park Service.

3. Curation and Curation Standards.

The USACE shall ensure that the materials and records resulting from the historic preservation work stipulated in this MOA are curated in accordance with 36 CFR Part 79 or in an alternative manner as approved by the USACE and SHPO.

4. Documentation Standards.

The USACE shall ensure that all written documentation prescribed by Stipulations II and III of this MOA shall be of professional quality, shall include good photographs and maps, and illustrations, as appropriate, and shall conform to the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740), as well as to applicable standards and guidelines established by the SHPO.

V. ADMINISTRATIVE STIPULATIONS

A. CONFIDENTIALITY.

The parties to this MOA acknowledge that Historic Properties covered by this Agreement are subject to the provisions of Section 304 of the NHPA (54 U.S.C. § 307103) and 36 C.F.R. §800.11(c), relating to the disclosure of sensitive archaeological site information and, having so acknowledged, will ensure that all actions and documentation prescribed by this Agreement are consistent with Section 304 of the NHPA, 36 C.F.R. § 800.11(c), and 5 U.S.C. § 552, as amended (Freedom of Information Act).

B. RESOLVING OBJECTIONS.

1. Should any party to this MOA object at any time in writing to the manner in which the terms of this MOA are implemented, to any action carried out or proposed with respect to the implementation of the MOA, or to any documentation prepared in accordance with and subject to the terms of this MOA, the USACE shall immediately notify the other parties to this MOA of the objection, and shall request their comments on the objection be provided within fifteen (15) calendar days following receipt of the USACE's notification, and proceed to consult with the objecting party for no more than thirty (30) calendar days to resolve the objection. The USACE will honor the request of the other parties to participate in the consultation and will take any comments provided by those parties into account.
2. If the objection is resolved during the 30-day consultation period, the USACE may proceed with the disputed action in accordance with the terms of that resolution.
3. If after initiating such consultation, the USACE determines that the objection cannot be resolved through consultation, the USACE shall forward all documentation relevant to the objection, including the USACE's proposed response to the objection, to the Council, with the expectation that the Council will, within thirty (30) calendar days after receipt of such documentation, do one of the following:
 - a. advise the USACE that the Council concurs in the USACE's proposed response to the objection, whereupon the USACE will respond to the objection accordingly. The objection shall thereby be resolved; or
 - b. provide the USACE with recommendations, which the USACE will take into account in reaching a final decision regarding its response to the objection. The objection shall thereby be resolved; or
 - c. notify the USACE that the objection will be referred for comment, pursuant to 36 CFR § 800.7(c), and proceed to refer the objection and comment. The USACE shall take the resulting comment into account in accordance

with 36 CFR § 800.7(c)(4) and Section 110(l) of the NHPA (16 U.S.C. § 470h-2(l)). The objection shall thereby be resolved.

4. Should the Council not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, the USACE may proceed with implementation of its proposed response to the objection. The objection shall thereby be resolved.
5. The USACE shall take into account any Council recommendation or comment provided in accordance with Section C.3 of this stipulation, with reference only to the subject of the objection. The USACE's responsibility to ensure all actions are carried out under this MOA, that are not the subject of the objection, shall remain unchanged.
6. At any time during the implementation of the terms of this MOA, should an objection pertaining to such implementation be raised by a member of the public, the USACE shall immediately notify the other parties to this MOA in writing of the objection and take the objection into consideration. The USACE shall consult with the objecting party and, if the objecting party so requests, with the other parties to this MOA, for no more than fifteen (15) calendar days. Within ten (10) calendar days following closure of this consultation period, the USACE will render a decision regarding the objection and notify all parties to this MOA of its decision in writing. In reaching its decision, the USACE will take into account any comments from the consulting parties regarding the objection, including the objecting party. The USACE's decision regarding the resolution will be final. The objection will thereby be resolved.
7. The USACE may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.
8. The USACE shall provide all parties to this MOA and the Council, when the Council has issued comments hereunder, and any parties that have objected pursuant to Stipulation V.B.6, with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.

C. AMENDMENTS

Any party to this MOA may propose that this MOA be amended, whereupon all parties to this MOA will consult for no more than thirty (30) calendar days to consider such amendment. The USACE may extend this consultation period. The amendment process shall comply with 36 CFR § 800.6(c)(1) and § 800.6(c)(7). This MOA may be amended only upon the written agreement of the Signatories and Invited Signatory. If it is not amended, this MOA may be terminated by a Signatory or Invited Signatory in accordance with Stipulation V.D.

D. TERMINATION

1. Only a Signatory or Invited Signatory may terminate this MOA. If this MOA is not amended as provided for in Stipulation V.C, or if the Applicant, the USACE, or the SHPO proposes termination of this MOA for other reasons, the Signatory or Invited Signatory proposing termination shall, in writing, notify the other parties to this MOA, explain the reasons for proposing termination, and consult with the other parties to this MOA for no more than thirty (30) calendar days to seek alternatives to termination. The USACE may extend this consultation period. Should such consultation result in an agreement on an alternative to termination, then the parties shall proceed in accordance with the terms of that agreement. Such consultation shall not be required if the USACE proposes termination because the Undertaking no longer meets the definition set forth at 36 CFR § 800.16(y).
2. Should such consultation fail, the Signatory or Invited Signatory proposing termination may terminate this MOA by promptly notifying the other parties to this MOA in writing. Termination hereunder shall render this MOA without further force or effect.
3. If this MOA is terminated hereunder, and if the USACE determines that the undertaking will nonetheless proceed, then the USACE shall either consult in accordance with 36 CFR § 800.6 to develop a new MOA, or request the comments of the Council.

E. DURATION OF THE MOA

1. Unless terminated pursuant to Stipulation V.D, or unless it is superseded by an amended MOA, this MOA will be in effect following execution by the Signatories until the USACE, in consultation with the other MOA parties, determines that all the terms of this MOA have been satisfactorily fulfilled, or within five (5) years of its date of execution, whichever comes first. Upon a determination by the USACE that all of the requirements of this MOA have been satisfactorily fulfilled, the USACE shall notify the other parties to this MOA in writing that the MOA has been fully satisfied and is therefore concluded.
2. If the requirements of this MOA appear unlikely to be fully performed within five (5) years following its date of execution, the USACE shall consult with the other parties hereto to reconsider its terms at least sixty (60) calendar days prior to the date on which five (5) years will have elapsed. Reconsideration may include an agreement by the parties to extend the MOA on its original terms for a mutually agreed-upon additional period, or an agreement to amend the MOA in accordance with Stipulation V.C, or termination. In the event of termination, the USACE will comply with Stipulation V.D.3, if it

determines that the Undertaking will proceed notwithstanding termination of this MOA.

F. EFFECTIVE DATE.

This MOA will take effect immediately upon full execution by the USACE and the SHPO.

EXECUTION of this MOA by the USACE and the SHPO, pursuant to 36 CFR § 800.6, including its transmittal by the USACE to the Council in accordance with 36 CFR § 800.6 (b)(1)(iv), and subsequent implementation of its terms, shall evidence that the USACE has afforded the Council an opportunity to comment on the Undertaking and its effects on Historic Properties, and that the USACE has taken into account the effects of this Undertaking on Historic Properties.

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SIGNATORY PARTIES:

UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

Name:  Date: 15 Aug 2017
Jason A. Gipson
Title: Chief, Nevada-Utah Section
Regulatory Division

UTAH STATE HISTORIC PRESERVATION OFFICER

Name:  Date: 8/22/17
Christopher Merritt
Title: Deputy State Historic Preservation Officer

INVITED SIGNATORY PARTY:

Name:  Date: Aug 11, 2017
Mike Ford
Title: Fords Inc., Applicant

ATTACHMENT 1
Area of Potential Effects/Permit Area

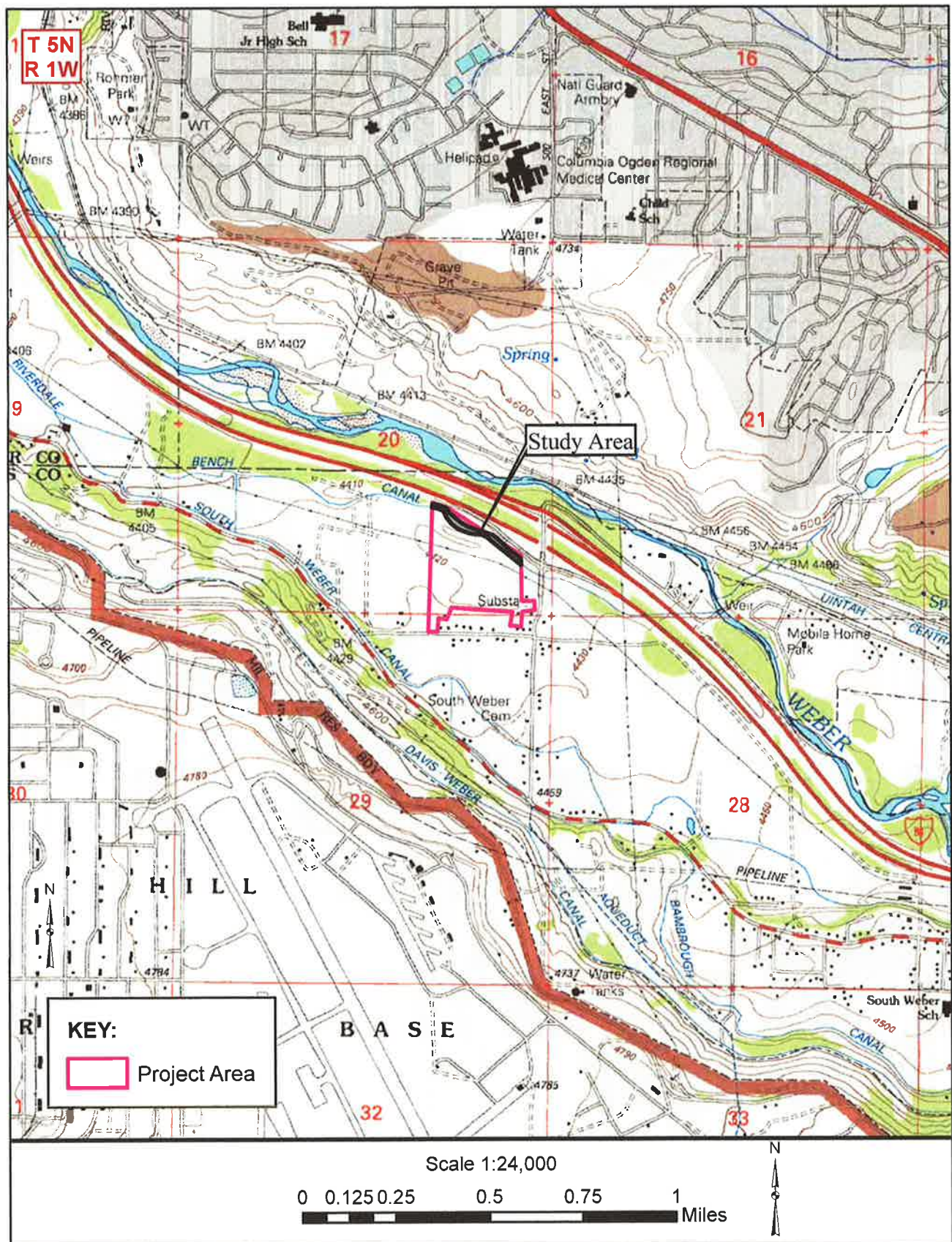


Figure 2. Location of the area surveyed for the Riverdale Bench Canal Relocation at the Old Maple Farms Subdivision. Taken from the USGS 7.5' Quadrangle Ogden, Utah (1998).